

Award No. 11155

Docket No. PM-12472

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of C. Creamer, who is now, and for some thirty years prior thereto, employed by The Pullman Company as a porter operating out of the Chicago District.

Because The Pullman Company did, under date of December 9, 1960, discipline Porter Creamer by assessing his service record with a "Warning," which disciplinary action was based upon charges which were not proved beyond a reasonable doubt as is provided for in the Agreement covering the class of employees of which Porter Creamer is a part, and therefore, said penalty is arbitrary, unreasonable, capricious, and in abuse of the Company's discretion.

And further, for the record of Mr. Creamer to be cleared of the charges in the instant case, and for the penalty (a Warning) exacted to be expunged from his service record.

OPINION OF BOARD: The claim here is based upon charges filed by and against the aggrieved employee, C. Creamer, employed as a Pullman Porter.

The charge filed by Carrier, is as follows:

"That on the outbound trip leaving Chicago, September 14, 1960: You failed to place your step box in position at all station stops, and, on the inbound trip leaving Miami, September 16, 1960: You failed to maintain your car in a cleanly condition, failed to place your step box in position at West Palm Beach, Fla. and further you were disrespectful to your supervising conductor."

As a result of a hearing granted the employee, by Carrier, on November 23, 1960, and on December 9, 1960, Carrier made its decision by assessing a warning penalty against his personnel record.

It is the opinion of the Board, that after a thorough review of the record here before us, that the penalty assessed by Carrier was fair and

was proved beyond a reasonable doubt. This Division has held in many similar cases under similar circumstances that it is not the function of the Board to disturb the reasonable penalty assessed by Carrier, where there is no showing that Carrier acted in a capricious or arbitrary manner.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement as alleged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1963.